

HOUSE BILL NO. 234

INTRODUCED BY B. PHALEN, J. SCHILLINGER, S. ESSMANN, B. MITCHELL, B. LER, G. OBLANDER, J.
BERGSTROM, G. KMETZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING THE PUBLIC DISPLAY OR
DISSEMINATION OF OBSCENE MATERIAL TO MINORS; ~~REMOVING EXCEPTIONS FOR EMPLOYEES OF
PUBLIC SCHOOLS; REMOVING EXCEPTIONS FOR OFFICERS AND EMPLOYEES OF PUBLIC LIBRARIES
AND MUSEUMS; AND AMENDING SECTION 45-8-206, MCA ;~~ CLARIFYING THE DISTINCTION BETWEEN
TWO CRIMINAL OFFENSES, OBSCENITY AND THE DISPLAY OR DISSEMINATION OF OBSCENE
MATERIAL TO MINORS; REVISING THE DEFINITION OF "NEWSSTAND" AND PROVIDING A DEFINITION
OF "COMMERCIAL ESTABLISHMENT" AND PROVIDING THAT NEITHER TERM INCLUDES SCHOOLS,
LIBRARIES, OR MUSEUMS; AND AMENDING SECTIONS 45-8-201, 45-8-205, AND 45-8-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 45-8-201, MCA, IS AMENDED TO READ:

"45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the
obscene nature of the material, the person purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing,
picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion
of the performance that makes it obscene, to anyone under 18 years of age;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years
of age;

(d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to
anyone under 18 years of age;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to
disseminate it to anyone under 18 years of age; or

1 (f) advertises or otherwise promotes the sale of obscene material or materials represented or held
2 out by the person to be obscene.

3 (2) A thing is obscene if:

4 (a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

5 (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or
6 simulated; or

7 (iii) it is a patently offensive representation or description of masturbation, excretory functions, or
8 lewd exhibition of the genitals; and

9 (b) taken as a whole the material:

10 (i) applying contemporary community standards, appeals to the prurient interest in sex;

11 (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive
12 way; and

13 (iii) lacks serious literary, artistic, political, or scientific value.

14 (3) In any prosecution for an offense under this section, evidence is admissible to show:

15 (a) the predominant appeal of the material and what effect, if any, it would probably have on the
16 behavior of people;

17 (b) the artistic, literary, scientific, educational, or other merits of the material;

18 (c) the degree of public acceptance of the material in the community;

19 (d) the appeal to prurient interest or absence of that appeal in advertising or other promotion of the
20 material; or

21 (e) the purpose of the author, creator, publisher, or disseminator.

22 (4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or be
23 imprisoned in the county jail for a term not to exceed 6 months, or both.

24 (5) Cities, towns, ~~or counties,~~ or school districts may adopt ordinances, ~~or resolutions,~~ or policies
25 that are more restrictive as to obscenity than the provisions of ~~45-8-206~~ and this section."
26

27 **SECTION 2. SECTION 45-8-205, MCA, IS AMENDED TO READ:**

28 **"45-8-205. Definitions.** As used in 45-8-205 through 45-8-208, the following definitions apply:

1 (1) "Commercial establishment" means a place of business that invites the general public for the
2 primary purpose of selling goods or offering entertainment. The term does not include a school, library, or
3 museum.

4 ~~(4)~~(2) "Display or dissemination of obscene material to minors" means that quality of a description,
5 exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when
6 the material or performance, taken as a whole, has the following characteristics:

7 (a) its dominant theme appeals to a minor's prurient interest in sex;

8 (b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently
9 offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

10 (c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the
11 material or performance has serious literary, scientific, artistic, or political value for a significant percentage of
12 normal older minors, the material or performance may not be found to lack such value for the entire class of
13 minors.

14 ~~(2)~~(3) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image,
15 description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated
16 G, PG, PG-13, or R by the motion picture association of America).

17 ~~(3)~~(4) "Minor" means a person under 18 years of age.

18 ~~(4)~~(5) "Newsstand" means a stand that distributes or sells newspapers or magazines. The term does
19 not include a school, library, or museum.

20 ~~(5)~~(6) "Performance" means any motion picture, film, or videotape (except a motion picture or
21 videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record;
22 compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed
23 before an audience of one or more, with or without consideration.

24 ~~(6)~~(7) "Person" means any individual, partnership, association, corporation, or other legal entity of
25 any kind.

26 ~~(7)~~(8) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

27 ~~(8)~~(9) "Sexual conduct" includes:

28 (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual

1 act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an
2 ultimate sexual act.

3 (b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

4 (c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by
5 being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a
6 revealing or bizarre costume.

7 ~~(9)~~(10) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or
8 bestiality."

9

10 **Section 3.** Section 45-8-206, MCA, is amended to read:

11 **"45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having
12 custody, control, or supervision of ~~any~~A commercial establishment or newsstand may not knowingly or
13 purposely:

14 (a) display obscene material to minors in such a way that minors, as a part of the invited public, will
15 be able to view the material. However, a person is considered not to have displayed obscene material to minors
16 if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the
17 material is not exposed to view or other reasonable efforts were made to prevent view of the material by a
18 minor.

19 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view,
20 with or without consideration, any obscene material; or

21 (c) present to a minor or participate in presenting to a minor, with or without consideration, any
22 performance that is obscene to minors.

23 (2) A person does not violate this section if:

24 (a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable
25 cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate,
26 educational identification card, governmental identification card, tribal identification card, or other official or
27 apparently official card or document purporting to establish that the person is 18 years of age; OR

28 ~~(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or~~

1 a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the
2 material or performance was disseminated in accordance with policies approved by the governing body of the
3 institution;

4 ~~(c) the person is an officer, director, trustee, or employee of a public library or museum and the~~
5 ~~material or performance was acquired by the library or museum and disseminated in accordance with policies~~
6 ~~approved by the governing body of the library or museum;~~

7 ~~(C) THE PERSON IS AN OFFICER, DIRECTOR, TRUSTEE, OR EMPLOYEE OF A PUBLIC LIBRARY OR MUSEUM~~
8 ~~AND THE MATERIAL OR PERFORMANCE WAS ACQUIRED BY THE LIBRARY OR MUSEUM AND DISSEMINATED IN ACCORDANCE~~
9 ~~WITH POLICIES APPROVED BY THE GOVERNING BODY OF THE LIBRARY OR MUSEUM;~~

10 ~~(d)(c)(D) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a~~
11 ~~bona fide school, LIBRARY, OR MUSEUM, library, or museum ; or~~

12 ~~(e)(d)(E)(B) the person is a retail sales clerk with no financial interest in the material or performance~~
13 ~~or in the establishment displaying or selling the material or performance.~~

14 ~~(3) THE OFFENSE OF PUBLIC DISPLAY OR DISSEMINATION OF OBSCENE MATERIAL TO MINORS UNDER THIS~~
15 ~~SECTION IS SEPARATE FROM AND MAY NOT BE CONSTRUED TO NEGATE OR LIMIT THE PROVISIONS OF 45-8-201~~
16 ~~REGARDING THE OFFENSE OF OBSCENITY.~~

17 ~~(4) CITIES, TOWNS, COUNTIES, OR SCHOOL DISTRICTS MAY ADOPT ORDINANCES, RESOLUTIONS, OR~~
18 ~~POLICIES THAT ARE MORE RESTRICTIVE AS TO THE DISPLAY OR DISSEMINATION OF OBSCENE MATERIAL TO MINORS THAN~~
19 ~~THE PROVISIONS OF THIS SECTION."~~

20 - END -